

Regular Session, 2009

SENATE BILL NO. 175

BY SENATOR MICHOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MOTOR VEHICLES. Provides for membership of the La. Motor Vehicle Commission and for the distribution and sale of motor vehicles. (8/15/09)

AN ACT

To amend and reenact R.S. 32:1253(A)(2), 1261(1)(a)(iv) and (v), and (q), and 1268; and to enact R.S. 32:1261(7), 1261.1, and 1261.2, relative to the distribution and sale of motor vehicles; to provide for the membership of the Louisiana Motor Vehicle Commission; to provide for unauthorized acts of a manufacturer, distributor, wholesaler, distributor branch, factory branch, or converter; to provide for acts of a motor vehicle dealer or specialty dealer; to provide for violations; to provide for indemnification of franchised dealers; to provide for payments to dealers; to provide for penalties; to provide for repurchase upon termination of a franchise; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:1253(A)(2), 1261(1)(a)(iv) and (v), and (q), and 1268 are hereby amended and reenacted, and R.S. 32:1261(7), 1261.1, and 1261.2 are hereby enacted to read as follows:

§1253. Motor Vehicle Commission; appointment and qualifications of members; terms of office; organization; oath; official bond; compensation; powers and duties

1 A. The Louisiana Motor Vehicle Commission is hereby created within the
2 office of the governor and shall be composed of fifteen members appointed by the
3 governor, as follows:

4 * * *

5 (2) Each of the commissioners appointed under the provisions of Paragraph
6 (1) of this Subsection shall have been an actively engaged licensee of the
7 commission for not less than five consecutive years prior to such appointment, and
8 be a holder of such a license at all times while a member of the commission. Being
9 engaged in more than one such pursuit shall not disqualify a person otherwise
10 qualified from serving on the commission. Of these members, one member shall be
11 primarily engaged in the business of lease or rental, **one member shall be primarily**
12 **engaged in the business of heavy truck sales,** and one member shall be primarily
13 engaged in the business of sales finance.

14 * * *

15 §1261. Unauthorized acts

16 It shall be a violation of this Chapter:

17 (1) For a manufacturer, a distributor, a wholesaler, distributor branch, factory
18 branch, converter or officer, agent, or other representative thereof:

19 (a) To induce or coerce, or attempt to induce or coerce, any motor vehicle
20 dealer or specialty vehicle dealer:

21 * * *

22 (iv) To assent to a release, assignment, novation, waiver, or estoppel which
23 would relieve any person from liability to be imposed by law, unless done in
24 connection with a settlement agreement to resolve a matter pending a commission
25 hearing or pending litigation between a manufacturer, distributor, wholesaler,
26 distributor branch or factory branch, or officer, agent, or other representative thereof,
27 ~~or to require any controversy between a dealer and a manufacturer to be referred to~~
28 ~~any person or entity other than the commission, or duly constituted courts of this~~
29 ~~state or the United States, if such referral would be binding upon the dealer.~~

(v) To enter into a franchise with a licensee or during the franchise term, use any written instrument, agreement, release, assignment, novation, estoppel or waiver, to attempt to nullify or modify any provision of this Chapter, or to require any controversy between a dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted courts of this state or the United States, if such referral would be binding upon the dealer. ~~or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law.~~ Such instruments, agreements, and waivers are null and void, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation.

* * *

(q) To terminate, cancel, or refuse to continue any franchise agreement based upon the fact that the motor vehicle dealer owns, has an investment in, participates in the management, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles at a different dealership location, or intends to ~~or~~ has established ~~prior to May 1, 1999~~, another make or line of new motor vehicles in the same dealership facilities of the manufacturer or distributor.

* * *

(7) For any employee of a motor vehicle dealer, specialty vehicle dealer or used motor vehicle dealer licensed by the commission, while acting in the scope of his employment, to accept any payment, commission, fee, or compensation of any kind from any person other than the employing dealer, unless said payment is fully disclosed to and approved by the employing dealer.

§1261.1. Indemnification of franchised dealers

Notwithstanding the terms of any franchise agreement, each manufacturer or converter shall indemnify and hold harmless its franchised dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the dealer, arising out of complaints, claims, or lawsuit including but not limited to strict liability, negligence,

misrepresentation, express or implied warranty or rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly or design of motor vehicles, parties, or accessories, or other functions by the manufacturer of converter, which are beyond the control of the dealer.

§1261.2. Payment to dealers; penalties

It shall be a violation of this Chapter for a manufacturer of motor vehicles, distributor, wholesaler, distributor branch, factory branch, officer, agent or other representative thereof, to fail to pay dealers all monies due said dealers, except manufacturer hold-back amounts, within thirty days of the date earned by the dealer. Failure to make these payments shall subject the manufacturer, distributor, wholesaler, distribution branch, factory branch or officer, agent, or other representative thereof, to a penalty of the one and one-half percent interest per month, or fraction thereof, until sums due dealer are fully paid.

* * *

§1268. Requirements upon termination; penalty; indemnity

A.(1) In the event the licensee ceases to engage in the business of being a motor vehicle or specialty vehicle dealer, or ceases to sell a particular make of motor vehicle or specialty vehicle and after notice to the manufacturer, converter, distributor, or representative by registered or certified mail **or commercial delivery service with verification of receipt**, within thirty days of the receipt of the notice by the manufacturer, converter, distributor, or representative, the manufacturer, converter, distributor, or representative shall repurchase:

(a) All new motor and specialty vehicles of the current and last prior model year delivered to the licensee and parts on hand that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee. The motor and specialty vehicles and parts shall be repurchased at the cost to the licensee which shall include without limitation freight and advertising

costs, less all allowances paid to the dealer, except that new automobiles shall be purchased on the ~~following~~ schedule **as follows**:

(i) Vehicles with 0 - 1,000 miles at the cost to the licensee.

(ii) Vehicles with 1,001 - 6,000 miles at the cost to the licensee reduced by the net discount value of each mile in excess of 1,000 miles, where "net discount value" is determined according to the following formula: cost to the licensee multiplied by total mileage in excess of 1,000 miles divided by 100,000, and where "net cost" equals the dealer cost plus any charges by the manufacturer, distributor, or representative for distribution, delivery, advertising, and taxes, less all allowances paid to the dealer by the manufacturer, distributor, or representative for new, unsold, undamaged, and complete motor vehicles.

(iii) Vehicles with 6,001 or over - no obligation to repurchase.

(iv) Any mileage recorded by a manufacturer in distributing a motor vehicle to a motor vehicle dealer shall not be included in ~~this~~ **the** calculation **as provided in this Subparagraph.**

(b) At fair market value, each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, converter, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative. **Fair market value shall be no less than cost of acquisition of signs by the dealer.**

(c) At fair market value, all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear. **Fair market value shall be no less than cost of acquisition of special tools and automotive service equipment by the dealer.**

(d) The manufacturer, converter, distributor, or representative shall pay to the dealer the costs of transporting, handling, packing, and loading of motor ~~vehicle~~

1 **vehicles** or parts, signs, tools, and equipment subject to repurchase.

2 (2) The manufacturer or converter shall make the required repurchase after
3 the dealer terminates his franchise and within thirty days of the submission to it, by
4 registered or certified mail, return receipt requested, **or commercial delivery service**
5 **with verification of receipt**, of a final inventory of motor vehicles and parts on
6 hand.

7 B. Failure to make said repurchase without just cause shall subject the
8 manufacturer or converter to a penalty of one and one-half percent per month, or
9 fraction thereof, of the inventory value or returnable motor vehicles and parts, signs,
10 special tools, and automotive service equipment, payable to the dealer, as long as
11 said repurchase is not made.

12 ~~C. Notwithstanding the terms of any franchise agreement, each manufacturer~~
13 ~~or converter shall indemnify and hold harmless its franchised dealers against any~~
14 ~~judgment for damages, including but not limited to court costs and reasonable~~
15 ~~attorney fees of the dealer, arising out of complaints, claims, or lawsuits including~~
16 ~~but not limited to strict liability, negligence, misrepresentation, express or implied~~
17 ~~warranty or rescission of sale to the extent that the judgment arises out of alleged~~
18 ~~defective or negligent manufacture, assembly, or design of motor vehicles, parts, or~~
19 ~~accessories or other functions by the manufacturer or converter, which are beyond~~
20 ~~the control of the dealer.~~

21 ~~D. C.(1)~~ Upon the involuntary termination, nonrenewal, or cancellation of
22 any franchise by the manufacturer or converter, except for termination, nonrenewal,
23 or cancellation resulting from a felony conviction, notwithstanding the terms of any
24 franchise, whether entered into before or after the enactment of this Chapter or any
25 of its provisions, the new motor vehicle or specialty vehicle dealer shall be allowed
26 fair and reasonable compensation by the manufacturer or converter as agreed by the
27 parties, or lacking agreement, as determined by the commission, for ~~the following:~~

28 ~~(1) The~~ **the** dealership facilities if the facilities were required to be purchased
29 or constructed as a precondition to obtaining the franchise or to its renewal; provided

1 that if such facilities were leased and the lease were required as a precondition to
 2 obtaining the franchise or to its renewal, then the manufacturer or converter shall be
 3 liable for one year's payment of the rent or the remainder of the term of the lease,
 4 whichever is less.

5 (2) Payment under this Section shall entitle the manufacturers, converters, or
 6 distributors to possession and use of the facility.

7 (3) As used in this Section, "manufacturer" shall include a manufacturer, a
 8 converter, a distributor, a factory branch, distributor branch, or other subsidiary
 9 thereof.

10 **(4) The obligation of the manufacturer or converter to purchase a**
 11 **dealership facility, pursuant to this Section, is equally applicable if an affiliated**
 12 **entity or person affiliated with the dealer is the owner/lessor of the facility.**

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Sherri H. Breaux.

DIGEST

Present law provides for the La. Motor Vehicle Commission consisting of 15 members appointed by the governor as follows:

- (1) Eleven members from commission districts providing for geographic representation throughout the state, subject to Senate confirmation. Requires each such member to have been an actively engaged licensee of the commission for not less than five consecutive years prior to appointment, and be a holder of such a license at all times while a commission member. Further requires, from among these 11 members, one member to be primarily engaged in the business of lease or rental, and one member to be primarily engaged in the business of sales finance.
- (2) Each of the three remaining members, appointed from the state at-large, to be a public member, who is not a licensee under present law, with the sole function of hearing and deciding certain matters concerning brokers and certain disputes between manufacturers, distributors, converters, motor vehicle lessor franchisor, or representatives and motor vehicle dealers, specialty vehicle dealers, and motor vehicle lessors.

Proposed law retains present law, but additionally requires one of the 11 members appointed from among the commission districts to be primarily engaged in the business of heavy truck sales.

Present law specifies those acts which are violations by a manufacturer, distributor, wholesaler, distributor branch, factory branch, converter or officer, agent, or other representative. More specifically, provides as a violation to induce or coerce, or attempt to induce or coerce, any motor vehicle dealer or specialty vehicle dealer:

- (1) To assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by law, unless done in connection with a

settlement agreement to resolve a matter pending a commission hearing or pending litigation between a manufacturer, distributor, wholesaler, distributor branch or factory branch or an officer or agent; or to require any controversy between a dealer and a manufacturer to be referred to any person or entity other than the commission, or duly constituted court, if such referral would be binding upon the dealer.

- (2) To enter into a franchise with a licensee or during the franchise term, using any written instrument, agreement, or waiver, to attempt to nullify or modify any provision of law, or prevent a new motor vehicle dealer from bringing an action in a particular forum otherwise available under law. Provides that such instruments, agreements, and waivers are null and void, unless done in connection with a settlement agreement to resolve a matter pending a commission hearing or pending litigation.

Proposed law retains present law but deletes redundancies and clarifies present law violation prohibiting coerced releases from liability unless done in connection with a settlement of a pending matter before a commission or litigation. Proposed law further clarifies present law prohibiting coercion from an agreement to require a dealer to bring a controversy before a forum other than the commission or duly constituted state or federal court.

Present law further provides it is a violation for a manufacturer, a wholesaler, distributor branch, factory branch, converter or officer, agent or other representative to terminate, cancel, or refuse to continue any franchise agreement based upon the fact that the motor vehicle dealer owns, has an investment in, participates in the management, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles at a different dealership location, or has established prior to May 1, 1999, another make or line of new motor vehicles in the same dealership facilities of the manufacturer or distributor.

Proposed law removes reference to the date of May 1, 1999 and instead prohibits terminating, canceling, or refusing to continue any franchise agreement based upon the fact that the dealer "intends to or has" established another make or line of new motor vehicles.

Proposed law adds as a violation for any employee of a licensed motor vehicle dealer, specialty vehicle dealer or used motor vehicle dealer, while acting in the scope of his employment, to accept any payment, commission, fee, or compensation of any kind from any person other than the employing dealer, unless said payment is fully disclosed to and approved by the employing dealer.

Present law (R.S. 32:1268(C)) requires, notwithstanding the terms of any franchise agreement, each manufacturer or converter to indemnify and hold harmless its franchised dealers against any judgment for damages, including but not limited to court costs and reasonable attorney fees of the dealer, arising out of complaints, claims, or lawsuit including but not limited to strict liability, negligence, misrepresentation, express or implied warranty or rescission of sale to the extent that the judgment arises out of alleged defective or negligent manufacture, assembly or design of motor vehicles, parties, or accessories, or other functions by the manufacturer or converter, which are beyond the control of the dealer. Retains present law but re-designates the provision as proposed law R.S. 32:1261.1.

Proposed law requires a manufacturer of motor vehicles, distributor, wholesaler, distributor branch, factory branch, officer, agent or other representative thereof, to pay dealers all monies due such dealers, except manufacturer hold-back amounts, within 30 days of the date earned by the dealer. Provides a penalty of the one and one-half percent interest per month, or fraction thereof, until sums due dealer are fully paid.

Present law provides that in the event the licensee ceases to engage in the business of being a motor vehicle or specialty vehicle dealer, or ceases to sell a particular make of motor vehicle or specialty vehicle and after notice to the manufacturer, converter, distributor, or

representative by registered or certified mail, within 30 days of the receipt of the notice by the manufacturer, converter, distributor, or representative, the manufacturer, converter, distributor, or representative shall repurchase:

- (1) At fair market value, each undamaged sign owned by the dealer which bears a trademark or trade name used or claimed by the manufacturer, converter, distributor, or representative if the sign was purchased from or purchased at the request of the manufacturer, distributor, or representative.
- (2) At fair market value, all special tools and automotive service equipment owned by the dealer which were recommended in writing and designated as special tools and equipment and purchased from or purchased at the request of the manufacturer, converter, distributor, or representative, if the tools and equipment are in usable and good condition except for reasonable wear and tear.

Proposed law retains present law but also allows notice by commercial delivery service with verification of receipt to the manufacturer, converter, distributor, or representative. Further requires that fair market value be no less than cost of acquisition of signs or of special tools and automotive service equipment by the dealer.

Present law requires the manufacturer or converter to make the required repurchase after the dealer terminates his franchise and within 30 days of the submission to it, by registered or certified mail return receipt requested, of a final inventory of motor vehicles and parts on hand.

Proposed law retains present law, but also allows submission of the final inventory by commercial delivery service with verification of receipt.

Present law requires, upon the involuntary termination, nonrenewal, or cancellation of any franchise by the manufacturer or converter, except for termination, nonrenewal, or cancellation resulting from a felony conviction, notwithstanding the terms of any franchise, that the new motor vehicle or specialty vehicle dealer be allowed fair and reasonable compensation by the manufacturer or converter for the dealership facilities if the facilities were required to be purchased or constructed as a precondition to obtaining the franchise or to its renewal; provided that if such facilities were leased and the lease were required as a precondition to obtaining the franchise or to its renewal, then the manufacturer or converter is liable for one year's payment of the rent or the remainder of the term of the lease, whichever is less. Provides that payment under present law entitles the manufacturers, converters, or distributors to possession and use of the facility.

Proposed law retains present law and further provides that the obligation of the manufacturer or converter to purchase a dealership facility is equally applicable if an affiliated entity or person affiliated with the dealer is the owner/lessor of the facility.

Effective August 15, 2009.

(Amends R.S. 32:1253(A)(2), 1261(1)(a)(iv) and (v), and (q), and 1268; adds R.S. 32:1261(7), 1261.1, and 1261.2)